

*Fus Appellandi*

A D

Regem Ipsum, &c.

O R,

A manifestation of the KING's Part  
and Power to Relieve His Subjects  
against Erroneous or Unjust De-  
crees in CHANCERY.

---

*The Second PART.*

---

*By Walter Williams of the M. Temple, Esq.*

---

O verè Principis.—intercedere iniquitati-  
bus Magistratum, infestumq; reddere  
quicquid fieri non opportuerit.

*Plin. Paneg Trajan.*

O certainly, it is the part of a Prince to  
withstand the unjust actions of his Magi-  
strates, and to make void whatsoever ought  
not to have been done by them.

---

L O N D O N:

Printed for the *Author*, 1684.

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TO THE  
**K I N G's**  
Most Excellent MAJESTY.

Most Royal SIR!

**W**Hen Abraham had six  
times entreated and argu'd  
with God on the behalf of wicked  
Sodom, God was not angry with  
Abraham for so doing, nor forbad  
him, until he himself gave over:  
Therefore I hope my Lord the King  
will not be angry if I implore your  
Majesty the second time on the behalf  
of my self, and others, your innocent  
Subjects, seeing my first Treatise tou-  
ching

## Epistle Dedicatory.

thing Appeals to your Majesty in the Intervals of Parliament, from the Decrees of a Lord Chancellor or Lord Keeper, hath not given your Majesty and all your Privy-Council such satisfaction, touching the lawfulness and necessity of your Majesties receiving such Appeals, as that any have prevailed with your Majesty either to examine such Decrees in your sacred Person, or to refer the examination thereof to others: Therefore, having since met with many more Authorities and Precedents relating to that matter, I have put all together in this ensuing Treatise, in a better and briefer order and method than in my First, with full (and I hope satisfactory) Answers to all Objections that I have  
210  
heard



## Epistle Dedicatory.

heard made against your Majesties  
so doing; whereby, I hope, it will  
appear, that it is not only in your  
Majesties Power to do it, as a thing  
meerly ex gratia, and of favour on-  
ly; but that (with all due reverence  
and submission be it spoken) your Sub-  
jects, by the Law, (which your Ma-  
jesty hath frequently promised to  
govern by) ought to have right done  
them in the Intervals of Parliament  
against the mistakes of a Lord Chan-  
cellor or Lord Keeper, either by  
your Majesties examining their De-  
crees in your Royal Person, or by your  
referring the examination thereof to  
such a convenient number of persons  
as your Majesty shall think fit;  
and forasmuch as I am given to un-  
derstand, that your Majesty is infor-  
med,

## Epistle Dedicatory.

med, that if you should receive those Appeals, you would draw upon your self an intolerable trouble : I humbly beg leave to inform your Majesty, that though it be in your Majesties Power to hear and finally determine such Appeals in your own Person, which is confessed would be a very great trouble : yet it is sufficient if your Majesty be but pleased to refer it to others to do, which may be done without your Majesties examining the merits of the Cause, either by a words speaking to one of your Principal Secretaries of State, commanding him to signifie under his hand, that it is your Majesties pleasure that the examining of such a Decree be referred to such as your Majesty shall name ; or your Majesty may

may by your Royal Warrant order a Commission under the Great Seal for that purpose, either way being sufficient, thereby also empowering them to tax the party grieved his full Costs, in case the Appeal be causeless. And this hath been the ancient course and practice of the Kingdom without contradiction or discontinuance, until the Government it self was discontinued by the late Rebellion: and a discontinuance or alteration of the course of Judicial Proceedings, so occasion'd, I hope your Majesty will not permit; especially in a thing so reasonable, that the very Usurpers themselves could not choose but follow the pattern of former times; for they made it a standing Rule, That if any man

Epistle Dedicatory.

thought himself agrieved by the Decrees of those that then exercised the place of the L. Chancellor, two Judges out of each Court in *Westminster* were to meet them in the *Exchequer-Chamber*, and there to re-hear the Cause upon the former proofs, and determine it according to the Opinion of the majority of of them, as it is hereafter more particularly set forth. And because some insist upon it, that the Statute 17 Car. 1. cap. 10. hath prohibited that course, I have herein further explain'd that Statute. As to all which (because it is far from me to desire any thing of your Majesty contrary to Law, yet would be glad of your Majesties lawfull protection)

## Epistle Dedicatory.

tection) I most earnestly beseech your Majesty to be inform'd whether I am in the right or not, by the Opinion of your Majesties twelve Judges, of the Courts of Kings-Bench, Common-Pleas, and Exchequer; which, I beg leave to inform your Majesty, is the only proper and lawful Touch-stone in this and such-like Cases, and not the Opinion of One, or Two, or a few of them only, or of such as may think themselves interested to oppose what is hereby aim'd at: And because I have an apprehension that such have, or may counsel your Majesty against it, I also beg leave to inform your Majesty and Them, that in the 8th. year of H. 6. (as appears by the Parliament-Roll of that year, numb. 10.) divers  
Articles

## Epistle Dedicatory.

*Articles for the good governance of the King's Council for the time then to come, were (as the Roll mentions) unanimously agreed upon, coram Domino Rege in eodem Parlamento, in praesentia trium Regni Statuum. And by the 4th. of those Articles it is ordained, That no man of the Council ought to be present whilst any matter that concerns himself is there in debate: Much less therefore, I conceive, ought any man to give the Rule or Advise in any such Case.*

*And by the 14th. Article it is ordained, That in matters that concern the King's Prerogative, and wherein the King's Council are not learned, the King's Judges shall be call'd upon for their advice*

## Epistle Dedicatory.

vice, and their Names to be entered of Record, and what they advise. But if it should be objected, That those Articles were only intended for the governance of the then Council; yet it is the Law of the Land, That the Opinion of the Judges, in matters of Law, is always to be the Rule in the Intervals of Parliament, and sitting the Parliament, the Lords frequently take their advice, they being both learned in the Law, and sworn to give their Opinions accordingly, as near as they can. And as to any man's being a Judge, Director, or Adviser in his own Case, and wherein his Interest or Power is in question, it is every-where admitted to be a thing against common reason.

Now

## Epistle Dedicatory.

Now for my excuse for this, and my former undertaking, I beg leave to add, That tho' the Law and course of administration of Justice be not to be alter'd for the convenience of some particular men only; yet I humbly conceive every individual Subject your Majesty hath, hath Right to sue for the benefit both of the Law in being, and the legal course of administration thereof; and when the same is by accident discontinued, to petition your Majesty for reviving thereof, and if any reasons be offered against it so offer reasons for it to the end your Majesty may judge which are most weighty. Therefore that man, a Lawyer especially, must be very treacherous to his own just Interest, and the Interest of



## Epistle Dedicatory.

of all others that depend upon his advice, if he knows of any lawful remedy, and seeks it not, or neglects to discover or maintain it, when his Clients, Relations and himself, are reduc'd to insupportable necessities by such Decrees as not only by his own Opinion, but by good advice of others, he is convinc'd are mistaken. And I protest before Almighty God, that I never did or will appeal my self, or give advice to others, to appeal from any Decree but such as I verily believe to be mistaken; therefore I cannot forbear begging your Majesty to measure that advice which is against your Majesties heeding those Complaints of your Subjects, which are proper  
to

## Epistle Dedicatory.

to be made to your Royal Person, by the practice of Absalom mention'd 2 Sam: 15. where it is said, Absalom got up early, and every man that came to the King for Judgment, Absalom call'd to him, and said, See; thy matters be good and right; but there is no man deputed by the King to hear thee: Whether this tale of his were true, or no, I know not: but it appears, that thereby he alienated the hearts of the men of Israel from the King. But however this thing succeeds, for my own part I shall not be wanting in my duty to your Majesty, but shall continue as zealous in maintaining your Majesties peculiar Rights, Priviledges, and Prerogatives, as I have been in seeking that protection  
from

**Epistle Dedicatory.**

*from your Majesty which I conceive  
lawful ; and shall upon all occasions  
endeavour to continue (as, I thank  
God, I have done hitherto) to mani-  
fest my self, to the utmost of my  
Power,*

**Your MAJESTIES**

**most Faithful**

**and**

**Obedient Subject,**

**WALTER WILLIAMS.**

---

*Jus*

THE HISTORY OF

THE CITY OF LONDON

FROM THE FIRST SETTLEMENT

TO THE PRESENT TIME

BY JOHN STOW

OF THE CITY OF LONDON

AND OF THE MIDDLESEX

AND SURREY

AND OF THE COUNTY OF MIDDLESEX

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AND OF THE COUNTY OF SURREY

# TABLE

## OF THE

# CONTENTS.

**T**Hat before the Conquest it was the settl'd practice to appeal to the King from all other Courts, page 4.

That in the Reign of H 2. there was a Court wherein the King in person determin'd Causes, p. 8.

A Vindication of Bracton from the misconstruction put upon his words by Bradshaw at the illegal Tryal of King Charles I. p 9.

That the King is to be petition'd for what belongs to him to do; but if he doth it not, he is liable to no punishment, but from God alone, p. 16.

That the King, and no other, ought to judge, if he alone were able to compass it; but in what he cannot compass, he is to depute others, p. 18.

That the Chancellor and Justices of the Kings-Bench were appointed by Act of Parlia-  
a lia-

# The TABLE.

*liament, 28 Ed. 1. cap. 5. to attend the King;  
to assist him in Judgment, after all the great  
Courts of Parliament, Kings-Bench, &c.  
were settled,* p. 24.

*That such as in those days sought relief in  
Equity, were Suitors to the King himself,*  
p. 26.

*How it came at first that Suits in Equity  
were made to the Chancellor,* p. 31.

*When the Writ of Subpoena, now in use,  
to bring men to answer in Chancery, was first  
invented,* p. 33.

*Upon the Commons Petition for the regula-  
tion of the Chancellors Proceedings, it was  
promised by R. 2. in full Parliament, That  
when any man thought himself agrieved,  
upon shewing it to the King, he should  
have right done him,* p. 35.

*That in the Reign of H. 6. and Ed. 4.  
Chancery-Decrees us'd to be review'd in the  
Exchequer-Chamber, before the Chancellor  
and all the Judges,* p. 38.

*In H. 8's time others were joyn'd with the  
Chancellor. to review the Chancellors De-  
crees in the Court of Chancery,* p. 38.

*Precedents of Decrees in Chancery refer-  
red to the Judges to be examined by the com-  
mand of 2 Eliz.* p. 39.

Pre-

## The TABLE.

*Precedents of the like done by K. James,*  
p. 41.

*The Opinion of all the Judges of the Kings-Bench, That if a Court of Equity do wrong to a party by their Decree, he was not without remedy, for he might petition the King for redress,*  
p. 45.

*A Precedent of the House of Lords directing supplication to be made to the King for a Commission to review a Decree in the intervals of Parliament,*  
p. 50.

*Precedents of References, and of a Commission to review a Lord Chancellor's Decree by K. Charles I.*  
p. 55.

*A Precedent of an Order made by virtue of that Commission,*  
p. 72.

*That the Statute 17 Car. I. cap. 10. is no hindrance to the King's determining Appeals from Chancery-Decrees, either in his own person, or by referring it to others,*  
p. 88.

*Divers Objections against the King's receiving Appeals from Chancery answered,*  
p. 97.

*Bracton's Opinion of those single persons that love to determine Causes of their own heads without assistance, and the danger thereof,*  
p. 100.

*The punishment of a Lawyer that mis-informs a Court of Justice,*  
p. 103.  
That

## The TABLE.

That it is no disparagement to any Judge to be mistaken in his Judgment, and that such Judgment be redressed; but it is an ill thing in a Judge to hinder the legal examination of his Judgment, Ibid.

That the mischief of receiving Appeals without cause, is nothing near so bad as depriving a man of an Appeal that hath just cause, p. 107.

That it is no prejudice to the Jurisdiction of the House of Lords for the King to refer the examination of a Lord Chancellors Decrees to some of the Lords of Parliament, or other fit persons in the intervals of Parliament, p. 110.

It is so reasonable a thing that there should be an Appeal in the intervals of Parliament from a Lord Chancellors Decrees, that it was not only practised by our Kings, but the very Usurpers could not but admit and order it, p. 114.

The Opinions of several learned men touching Appeals to the King from his Courts of Justice in general, p. 116.

Instances of the failings of several good men, p. 128.

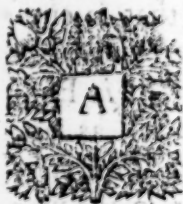
An Apology for supposing it possible that a good L. Chancellor may become a bad one, p. 129.



*Jus Appellandi*

A D

## Regem Ipsum, &amp;c.

*The Second PART.*

S I have propos'd to  
my self, in prose-  
cution of this mat-  
ter, to use few or  
no new Arguments  
of my own; choo-  
sing rather to collect what I meet  
with in the works of former  
times; it not being my design to  
attempt setting up any new pro-  
B ject,

ject, (as some think ) but to revive an old, necessary, and (until of late) a constant, and approved practice : So it hath been my care to gather no Flowers but from sweet Herbs, such Authorities as are of an untainted Reputation ; of which sort I take to be an Author, which I had not seen before I compos'd the first part of this Treatise ; and that is entitled, *Archeion, or a Discourse of the high Courts of Justice in England* : A Book, which ( as appears by the *Epistle Dedicatory* thereof ) was written in the year 1591. (which is near 100 years ago) by one Mr. *Lambert*, a man whose other Treatises as well as this represents him eminently learned

learned in the Laws and Constitutions of this Kingdom: And that which in my judgment adds much to the credit of that Book, (besides common Reputation) is, that a Manuscript of it was thought fit by the late Lord Chief-Justice *Hales* (one of the most celebrated men of his Profession) to be one of those choice Legacies which he bestowed upon the Society of *Lincolns-Inn*, and is by them carefully kept in their Library, as a thing of value.

By that Book, *fo. 13.* it is affirmed, *That Alfred, the Saxon (but Christian) King of this Realm, who reigned not long after the union of the Saxon Heptarchy,*  
B 2
having

having divided this Kingdom into Counties, Hundreds, Boroughs, and Tythings, and established Courts and Jurisdictions in every of these Divisions, to the end men might have Right done them at home: yet he retained to himself the decision of such matters as by just cause of Appeal, either for Law or Equity, should be brought unto him. And for this, that Author quotes Ingulphus of Croyland, who was sometime Secretary to Hen. 1. and wrote of things from the year 664. to 1066. which was the year of the Norman Conquest.

The same Lambert, fo. 15. affirms, That he read in the Laws of King Edgar, (who was the sixth  
 King

King from *Alfred*) in the Saxon  
 Tongue, what he Englisheth  
 thus; *Let no man seek to the King*  
*in matters of variance, unless he*  
*cannot find Right at home; or if*  
*that Right be too heavy for him,*  
*then let him seek to the King to*  
*have it lightned.* He affirms also,  
 that it is to be seen to the like ef-  
 fect in the Laws of *Canute* the  
*Danish King of England.* Out of  
 all which, he concludes, fo. 16.  
 as followeth:

First, *That every man had*  
*means to sue in the inferiour Courts*  
*at home in the Countrey for recovery*  
*of his Right.*

Secondly, *That no man ought*  
*to sue out of the County, or to draw*

his Plea from thence without good cause.

Thirdly, That the King himself had a high Court of Justice where he sat in person.

Fourthly, That that Court of the King's did judge not only according to meer Right and Law, but also according to Equity and good Conscience; that is, if the rigour of the positive Law were too severe in any case, as by reason of some accidental circumstance it might sometimes happen, then it was to be mitigated by the conscience of the Prince.

He says also, fo. 17. That after this order was all Justice administered until the time of William the Con.

Conquerour ; during whose Reign, as also under the Government of King Rufus, it is to be thought the ordinary course of Justice was much disturb'd, as well by reason of the Intestine & Foreign Wars, as also because those two Princes governed by a meer and absolute Power, as a Realm obtained by Conquest. Yet they did not so utterly abolish these Courts, but that they flourish'd soon after.

It appears, that Hen. 2. had a peculiar Court to himself, wherein he in person determined Causes ; for Gervasius Tilburiensis, an Officer of the Exchequer, who penn'd special Dialogues of the observations of that Court, which he dedicated to Hen. 2. wherein

He speaks of the antiquity of the  
 Exchequer, and affirms, that the  
 Conquerour brought it out of  
 Normandy: And there he hath this  
 Sentence, *Nulli licet Statuta Sta-*  
*darum infringere, &c.* It is not  
 lawful for any to break the Or-  
 dinances of the Exchequer, which  
 Court hath this priviledge equal  
 with the very Court of the King,  
 where he in his own person de-  
 termines Causes: That there is  
 no averment against the Records  
 thereof, whereby it is plain the  
 King had a peculiar Court to  
 himself, wherein he sat as a  
 Judge. The next Authority in order  
 of time that is for my purpose,  
 is Bracton, *De Legibus & Consue-*  
*tudini-*



*tudinibus Angliæ.* This *Bracton*  
 was Lord Chief-Justice of *Eng-*  
*land* in *Hen. 3.*'s. time, as is af-  
 firmed, and his Book was always  
 had in great esteem amongst the  
*English* Lawyers: Yet hath he  
 been abused, and his sense wil-  
 fully mistaken, and his words  
 made tile of to ground an Au-  
 thority and Power in the late  
 Rebels to Judge, Condemn and  
 Execute their King; which,  
 whilst he may be thought guilty  
 of giving any warrant for, I can  
 not think him fit to be believed  
 in any thing: but if his words  
 be misinterpreted, as they were  
 then, he is not in fault; for no-  
 thing can be so well said or writ,  
 but may be ill taken by some.  
 T. Yof

for there have been those that have wrested even the Scripture it self to their own Damnation.

Bradshaw, the President of the late pretended high Court, contriv'd for the Murder of King CHARLES I. to maintain their pretended Power of judging the King, says thus: "*We know this to be Law, Rex habet Superiorem Deum, & Legem, & Curiam, & debent ei frenum ponere; they ought to Bridle him.* From whence he falsely concludes, That if the King will go contrary to the end of his Government, he is to understand that he is but an Officer of trust; and that they are to take order for the animadversion & punishment of such an offending Governor.

Those

Those *Latine* words which *Bradshaw* repeated, are in *Bracton* lib. 2. fo. 34. But they stand not singly, as he repeats them; for in *Bracton* they are but part of a sentence, which taken by themselves may be easier wrested from their true sense, than if joyned with the words which accompany them in *Bracton*, where the whole Sentence runs thus:

*Rex habet Superiorem, Deum, scil. Item Legem per quam factus est Rex. Item Curiam suam, viz. Comites, Barones, quia Comites dicuntur quasi Socii Regis, & qui habet Socium habet Magistrum, & adeo si Rex fuerit sine frano, (id est) sine Lege debent ei fieri potest nisi ipsi vel fuerint cum Rege sine fratio,*

&

*E*t tunc clamabunt subditi. The English whereof is this: Indeed the King hath a Superiour, that is to say, God: Also he hath the Law, whereby he is made King: and he hath his Counsell, that is to say, Earls and Barons: for Comites, which signifies Earls, are said to be as it were the King's Fellow-labourers; and he who hath a Fellow-labourer, hath a Master; and therefore if the King should be without any restriction, that is, without Law, they ought to put a restriction upon him, unless They and the King be without any restriction, and then the Subjects will cry out, and complain.

Now, what is the substance of all this? Why it is, that the King hath

hath a Superiour, and he tells you who it is, it is God: He doth not say the King hath Superiours in the plural number. He says also, He hath a Law; for though he repeats not the word [*habet*, hath] to every particular, as *habet Superiorem, habet Legem, habet Curiam*; yet it is so to be understood according to the Latine manner of speaking: And he tells you the effect of the Law; that is, by the Law he is made King; but not a word of punishment. And he says further, that he hath His Court: *Curiam SUAM*, not *Curiam* only, as Bradshaw says, as if the Court were of some other bodies constitution; but HIS COURT, a Court of his own erecting.

erecting. And he tells you who that Court consists of; that is, of such as are ( *quasi Socii* ) as it were his *Fellow-labourers*, for the word *Socii* there implies, *Fellow-labourers*; such whom the King hath entrusted with a share of the burden of the Government for the King's ease. And as to what *Bracton* says, *He that hath a Fellow labourer, hath a Master*, it's true, for labour implies an imposition, but a Fellow labourer cannot be supposed to be a Master, as he is only a *Fellow-labourer*: it must be somebody else that is supposed to be Master, for the *Socii* are *Socii* still, and the Master must be look'd for elsewhere: and you  
are

are told before who it is that is the King's Master or Superiour: It is GOD: It is He that hath laid the charge and burden of governing the People upon the King, and the King chooseth his own Fellow-labourers, and for their encouragement gives them Honour, and other Rewards: All the Earls, Barons and Nobles are of the King's Creation; He is the Fountain of Honour as well as Justice: and because all good Kings govern themselves, and all that are under them, by the Laws of God and Nature primarily, and by their own and their Predecessors Municipal Laws secondarily, they are content their actions should be restrained by these

these Laws, and by the Councels, Admonitions, Reasonings, and Advice of those who they call to their assistance : But I find not a word in *Bracton* of any punishment any of them can lawfully inflict upon the King. They can only advise him, and that they ought to do. Nay *Bracton* in another place before this, (*viz. lib. 1. fo. 5. cap. 8.*) towards the latter-end, declares positively to the contrary, and says thus : *If any thing be to be sought for from the King, there being no Writ that ought to go against him, he is to be petitioned that he correct and rectifie his actions ; which if he will not do, sufficit ei ad pœnam quod Dominum expectet ultorem, it*  
*is*



is sufficient that he knows God will  
 be the Avenger. No man should  
 ought to dispute his actions, much  
 less are they to appeal against them.  
 It is true, as to matters of Controver-  
 sie touching Property, our Kings, in  
 cases wherein their own Rights, or  
 in any thing that is done against  
 themselves, leave it to the deter-  
 mination of their Judges; and there  
 in the King is quasi minimus, he  
 submits to it as any of his Subjects  
 do, but in exhibitione Juris ne-  
 mo debet esse major eo in Reg-  
 no suo, in administration of Justice  
 between his Subjects, none ought to  
 be greater or higher than he: yet in  
 prudence he takes Council.

I presume I have sufficiently  
 cleared this Author from the guilt

of giving Subjects of any sort, high or low, jointly or severally, any colour of Power to punish their King: And therefore now I may proceed to shew what he says as to the matter in hand. When *Bracton* wrote this Book, all the great Courts of Parliament, *Common-Pleas*, and *Exchequer*, were establish'd; yet (*lib. 2. fol. 55. cap. 24.*) he says thus: It is to be observ'd, that our Lord the King hath Ordinary (or Fundamental) Jurisdiction, Dignity and Power above and over all that are in his Kingdom, Parliament and all; none excepted. And again he says, It appertains to the Crown and Dignity of our Lord the King to do Justice and Judgment, and to keep the Peace,

Peace, without which the Crown cannot subsist or be maintain'd, and such Rights and Jurisdictions cannot be transferred to Persons or Tenements; nor can they have the use or execution of the Law, unless the same be given them from their Superiour. So that delegated Jurisdiction cannot be delegated, but ordinary and fundamental Jurisdiction remains still with the King Himself. And (lib. 3. f. 107. cap. 9.) the same Author says, The King, and no other, ought to judge, if he alone were able to perform that task; he being thereunto obliged by tenor of his Oath: therefore the King ought to exercise the power of the Law, as God's Vicegerent upon Earth. And fo. 108. cap. 10. If

our Lord the King cannot compass  
 to determine all Causes, to the end  
 his labour may be the easier by sha-  
 ring the burden amongst divers per-  
 sons, the King ought to choose in  
 his Kingdom men fearing God and  
 having Covetousness, and of them to  
 constitute Judges: some of whom  
 were at large, without residences, al-  
 ways attending his person, whose bu-  
 siness it was to correct the injuries  
 and errors of all other Judges. And  
 PART 42. OF THE AUTHORITY OF  
 all these Judges might be determined  
 by the King when he pleased to re-  
 voke that authority by express  
 terms, or when he pleased to appoint  
 other Judges in the Cause, either to  
 examine the whole Cause, or any  
 particular Part thereof.

79 *Mirror of Justices*, a Book writ  
 in Ed. 1.'s time, fo. 232. says, *Ja-  
 risdiction is the chief Dignity that  
 appertains to the King.* And fo.  
 235. he says, *The King by his  
 Authority-Royal makes his Judges  
 in several degrees, and doth limit to  
 every one his Power in several man-  
 ners.* And *Fleta* affirms, *lib. 1. cap.*  
*17. fo. 16.* none can judge in  
 temporal matters, but only the  
 King and his Substitutes and De-  
 legates : And, fo. 86. he saith, *The  
 King has his Court in his Councel,*  
*in his Parliaments, where present*  
*his Prelates, Earls, Barons, and o-*  
*ther skilful men, &c.* So that the  
 Councel and the Parliaments are  
 the King's Courts, and not the  
 Lords or the Commons Courts :

And in short, therein lies the excellency of Monarchy, that the supreme and last Judge, the Monarch, is above Bribery and Corruption; and where that can have no effect, there can be no great hurt; for *the love of Money is the root of all evil.*

These are all the Books of general Law that I find of those times, except *Britton*, which is supposed to be written by King *Ed. 1.*'s own direction, and therefore I mention it not, lest it should be supposed infected with partiality on the King's side, tho' for my own part I think not.

The King was to appoint all Judges, as appears by the said Authorities: But why? *ut levior sit*

*sit illi labor*, to ease himself of trouble, since he could not compass to determine all Causes himself; But ( says Lambert ) it was never intended to deprive him, or discharge him wholly of all Judicature, so as to be for ever after wholly unoccupied, or unconcern'd; For the words in the Coronation-Oath, *Facies fieri in omnibus iudiciis tuis equam & rectam Justiciam secundum vires tuas*, do more properly denote the King's own doings, than the doings of his Substitutes Judges, though their Judgments be also after some sort the Judgments of the King himself: For, *Qui per alium facit per seipsum facere videtur*: Yet, if They err, it appertains to Him

to correct their Errors by such prudent methods as the nature of the thing require, and as hath been heretofore usually practised and approved.

The K. then had a Court where in he in person determined Causes, and that it was expedient it should be so, even after the Parliament it self, and the three great Courts of Kings-Bench, Common-Pleas, and Exchequer, were settled, farther appears, in that it was well approved of that it should be so, by all the three States of the Realm, as well as by the King, as appears by the Statute of 28 Ed. 1. cap. 5. where it is enacted,



That the Chancellor and the Justices of the Kings Bench, should follow the King, that he might have at all times near him some Sages of the Law, that should be able only to order all such matters as should come into the Court, at all times when need required.

And this was so ordained (as Lambert in his fore-mentioned Archeion, fo. 38. and Dugdale in his *Origines Judiciales*, fo. 36. do affirm) that the Justices might inform the King what was meer, strict, and literal Law, and the Chancellor (who in those times was a Spiritual man, and consequently thought to have a better conscience

science than Lay-men) to advise the King what was good conscience, to the intent His Majesty might from the consideration of both, frame an equal and just Judgment; and *Lambert* fo. 59. expressly affirms, that such as then sought relief in Equity, were Suitors to the King himself, who being assisted with his Chancellor and Council, did mitigate the severity of the Law in his own person; but when it pleased his Majesty to be absent, he sometimes left it to the Chancellor and the Council; and that Author is as express in it, that the Chancellor had not any Court of Equity proper to himself at that time, but rather assisted the King, or otherwise

otherwise supplied his absence by special Command, for ending such Cases as had been presented to his Royal Person; the Chancellor's more proper and peculiar business being in those days to seal the King's Grants, and keep Enrollments thereof, and by himself and his Clerks to devise and seal Original Writs, which are Warrants for the Courts of Justice to proceed upon: But he had in those days also a Court for proceedings upon Recognizances, Statutes, *audita querela*, Petitions, *Monstrans de Droit*, &c. and for Priviledges of the Ministers of his Court, and their attendants, wherein he proceeded according to the right line of Common-Law;

Law; and if he erred in his Judgments, there a Writ of Error lay into the *Kings-Bench*, where the Judgment was reversed.

In this plight stood the affairs of Judicature for a long time after, and Complaints were frequently presented to the King's Person, as appears by the Statute of the 37 *Ed. 3. cap. 18.* where it is recited,

That at that time many false suggestions were made to the King himself, as well for malice as otherwise, whereof the King was often grieved, and divers of the Realm put in damage, against the form of the Great Charter, that says, No man was to be taken or imprisoned contrary to the form

form of the said Charter. And therefore it was ordained, That all they that make such suggestions, shall be sent with the same suggestion to the Chancellor, Treasurer, and the Kings Grand Councel, and that they were to find Surety to pursue their suggestions, and incur the same pain that the other should have had if he were attainted. In case the suggestion were found evil, and then Process of Law to be made against them, withought being taken and imprisoned against the form of the Great Charter.

By this Statute it is plain, that suggestions were frequently made to the King himself; and sheweth this Statute ordains, That such as made suggestions to the King should

should be sent to the Chancellor, Treasurer, and the King's Grand Council; it appears they were to be so sent for this only end, viz. to give security to make good their suggestions: there is not a word in the Statute that impowers the Chancellor, Treasurer, or Grand Council, to examine and determine the matter of such suggestions; so that it was still in the Kings choice, whether he would determine the matter of such suggestions in his own person, or refer it to others, as before that Statute he might have done, his reference to such as he thought fit being their Authority; and whenever that was done, it was *ut levior sit illi labor*, to ease him

of

of trouble, but not to deprive him of Power.

I think I discover in this Statute, though no direct power of determining Causes is thereby given, yet what by consequence was the first foundation, and made way for the Power now claimed by the Chancellor in the Equity-part of the *Chancery*, and of the Lord Treasurer, Chancellor, and Barons of *Exchequer*, in the Equity-side of *Exchequer*, and of the Privy-Council whilst they had it, before the Statute 17 *Car. 1.* to determine matters of Equity; for by this Statute, all persons that brought any Complaint to the King, (of whom it is said before by *Lambert*, fo, 59, That

That Complaints in matters of Equity were in those days peculiar to himself; were to be sent to the Chancellor, Treasurer, and Grand Council, to give security to make good their suggestion; which being done, such of them before whom such security was given were in some sort possessed of the Cause, and thereby grew a convenience that the King should give them <sup>power</sup> or permit them to determine it, both for the lease of the King and the Party, without going back to the King; and hence, in all appearance, it came to pass, that men forbore to trouble the King's person with their suggestions; and knowing where they were to be sent if they

and I did,



did, therefore they presented their Petitions immediately to the Chancellor, Treasurer, and Council, or some of them, as the nature of the thing requir'd: But it was scarce thought then, I believe, that the consequence of this would be to deprive the King of his Power; and this somewhat appears by what follows: for in the beginning of R. 2.'s time, who was the next King to Ed. 3. and not before that time, the Writ of *Quibusdam certis de causis* (which is the Writ of *Subpoena* now in use to call men to Chancery upon suggestion of Equity) was invented by the subtilty (for so it was termed) of John de Waltham, being then Guardian

D                      dian

dian or Keeper of the Rolls, in  
Chancery; but afterwards, about  
the 12th of R. 2. was made Bi-  
shop of Salisbury, and Lord Treas-  
urer of England.

But these persons were no fool-  
ner entrusted with this Power,  
but they, by colour of Power to  
judge according to Equity, did not  
only draw all Causes before  
them, but judged quite contrary  
to the rules of the Common  
Law, which they ought not to  
do, for nothing can be more in-  
just than the judg-  
ments of the Common Law,  
which in such cases as exactly fall  
within the rules thereof, without

any apparent intervening circumstances of fraud, accident, or breach of Trust; insomuch that the Commons in the 17th year of R. 2 petitioned, That neither the Chancellor nor the King's Council should make any Ordinance against the Common-Law, or ancient Customs or Statutes of the Realm, nor make any Writ of *Quibusdam certis de causis*, for answering in any sort, where recovery is given by the Common-Law, but that the Common-Law should run wholly amongst the people: to which the K. answered, *Let it be used as it hath been used before this time, so as the Regality of the King should be saved; for the King will save*

his Regality, as his Progenitors had done; and if any person do find himself agrieved, let him shew it in specialty, and Right shall be done him. *via Anderson ibs.*

I would very fain know, if the Chancellor had in those times made any Ordinance contrary to the Common-Laws, Customs, and Statutes of the Realm, whereby any should be grieved; to whom was the complaint to be made? was it not to the King? and was it not the King Himself that promis'd that right should be done? and how could it be done, but by Himself, or such as He pleased to refer it to? And certainly there could not be a surer establishment for relief against a

Lord Chancellor's mistake, than the King's promise in full Parliament, that it should alway be had, upon shewing the matter to the King; and if any thing can make it *de jure*, such a promise surely must: and though it cannot produce any presidents of relief against the Chancellors Decrees of so long standing as these times, in regard that such matters were not so carefully kept, there being but few of the very Decrees of those times to be now seen, yet I can produce such sort of Precedents, some of great Antiquity, and some also of later date.

Towards the latter end of H. 6. and in the Reign of E. 4. we have Reports of divers Decrees

for that appear to be review'd in the *Exchequer Chamber*, before the Chancellor, and Judges of both Benches, as appears by 37 H. 6. fourth, and in the same Book, folio 35, 36. in 7 E. 4. fo, 15, and 20 E. 4. 67. And these, I presume, were not all the Cases that were of that nature, but the most remarkable only.

In the Year-Book of 27 H. 8. folio 14. I find, that the King's Secretary and Mr. Fitz-Herbert were joynd with the Chancellor to review a Decree in a Case between the Prior of St. John's and one Dockeray; where it appears, That the Secretary gave rules in the Cause as well as the Chancellor; but whether these were joynd with

with the Chancellor by the King's command, or no, doth not appear by the Books. But if that should not be granted me, there are plenty of later instances of References and Commissions, which appear to be by the King's command, upon Petition to him for the examining and rectifying of the supposed Mistakes of a Lord Chancellor and Lord Keeper; and those I meet with are as followeth:

In Michaelmas Term, 39 & 40 Eliz. in a Cause in Chancery between Throgmorton and Finch: Finch pleaded, That there had been a Judgment at Law in the matter, and therefore it ought not to be

drawn into question in Chancery; after such Judgment at Law; for if the Plaintiff had cause of Equity of his side, he ought to have gone into Chancery before Judgment was given at Law. But the Chancellor over-ruled the Plea, and order'd Finch to answer the Bill. But upon Petition to the Queen, she referred the matter to the Judges, who after great deliberation certified, that Finch's Plea was a good Plea; and upon their Certificate thereof to the Chancery, all proceedings there against Finch were staid, as appears by Cooks 4 Inst. fol 86.

In Michaelmas Term, 42, & 43 Eliz. in a Cause between the Earl of Worcester and others, Plaintiffs,



Plaintiffs, and Sir Moyle Finch and others Defendants, the Chancellor decreed for the Plaintiff; whereupon the Defendants petitioned the Queen, and she referred the consideration of the whole matter to the Judges; who, after hearing the Cause, certified their Opinions into the Chancery, *That the Decree ought to have been for the Defendants*; and thereupon it was reversed, as appears by *Cooks 4 Inst. fo. 85.* and by *2 Anderson 162.*

In the *Registers Office* I find an Entry of an Order of the 21<sup>st</sup>. of June in the 2<sup>d</sup>. year of K. James, between Sir John Chamberlain, Plaintiff, and Jo. Bubb and others, Defendants, in these words:

*Forasmuch*

Forasmuch as this Court was this present day inform'd by His Majesties Attorney-General, being of the Defendants Council, That question having been long time between the Plaintiff, and Defendants, being Tenants of his Manor of Church-Down; and several Verdicts and Decrees having been made for the Defendants, upon the custom of sibi and suis; the said Defendants, to be freed from all further troubles, exhibited their Petition to the late Queen, who referred the hearing of those Causes unto the Lord Chief Justice of England; who having heard the same Cause at large, set down an Order therein, but the said Plaintiff refused to perform the same.

same; whereupon the said Defen-  
 dants having exhibited a Bill in the  
 Court of Request, to have the said  
 Lord Chief Justice's Order decreed,  
 by the said Plaintiff appealed from  
 that Court, and at the King's Ma-  
 jesties first coming in, exhibited a  
 Petition to His Highness, and  
 therein vouch'd the Order so made  
 by the said Lord Chief Justice, and  
 suppos'd that the Defendants refus'd  
 to perform the same; whereupon  
 His Majesty referred the hearing of  
 the Cause (upon that Petition) unto  
 the Lord Chancellor and Lord Chief  
 Justice; which the Plaintiff con-  
 cealing, hath now exhibited his Bill  
 into this Court, touching many of the  
 matters now in question in this  
 Court; wherunto the Defendants  
 having

having answered, and desired that the matter might be heard upon the former proofs ; and because the Plaintiffs Council do now also desire the same, it is therefore ordered, That the matter shall be set down to be heard on some day of the next Term ; at which time the Lord Chancellor and the said Lord Chief Justice will hear the Cause, both according to the said Reference from His Majesty, and also judicially upon the Bill and Pleadings in this Court,

In the 13 of K. James, in the Kings-Bench a motion was made for a prohibition to the Chancery of Chester, for holding Plea of a matter triable at the Common-Law ;

Law ; which the *Kings Bench* could not do , because *Chester* was an exempt Jurisdiction : And it was then declared by the Court of *Kings Bench*, That if a Court of Equity, in case of Equity, do wrong to a party by their Decree made against him, he is not in this case without remedy ; for he ought to sue to the KING by Petition, who May give him redress by his Judges, referring the matter to them ; and the Court advised that course to be taken in the principal Case, as appears by *Blaftode 3d. Report. fo. 118.* I find by the Journals of the Lords in Parliament, May 28. 1624. That upon a Petition of *William Matthews* against *Geo. Matthews*,

Matthews, the Lords Committees  
 appointed to examine the Cause, ha-  
 ving heard Counsel several days, on  
 both sides, made their Report to the  
 House in these words, (viz.) "The  
 'Lords Committees, upon the exami-  
 'nation of the whole Cause between  
 'William and George Matthews,  
 'find William Matthews's prin-  
 'cipal Debt to be £2601. which they  
 'hold fit to be paid by the said Geo.  
 'Matthews, &c. And for security  
 'of the payment of that Debt, the  
 'whole Land to stand bound. And  
 'that this be the better perfected,  
 'the Lords Committees think fit the  
 'execution thereof to be recommended  
 'to the Court of Chancery. ad 10. I

Afterwards

Afterwards, in the afternoon  
of the same day, Geo. Matthews  
exhibited his Petition in his  
own words:

To the Right Honourable  
the Lords Spiritual &  
Temporal in the High-  
er House of Parlia-  
ment assembled,

The humble PETITION of  
GEORGE MATTHEWS, Esq;  
Humbly sheweth your Lordships,

THAT your Petitioner's Deeds  
have now questioned hath been se-  
veral times submitted to by William  
Matthews, never questioned during  
the

the life of the Petitioners Father,  
 and His Majesty, upon information  
 by Petition on both sides, declared,  
 That he saw no cause for que-  
 stioning thereof; and it was there-  
 upon ordered, That to hear a  
 Cause after a submission, (no  
 corruption appearing) would be  
 a dangerous Precedent; in con-  
 sideration whereof, and that the  
 Decree stands questioned only by Pe-  
 tition, nor was your now Petitioner  
 ever party to any Suit; nor is there  
 any Bill depending in any Court, he  
 being informed by Council, That it  
 hath been the course of this Ho-  
 nourable House to reverse De-  
 crees but by Bill legally exhibi-  
 ted, especially where no corrupti-  
 on appears: *He most humbly be-  
 seecheth*



*Seecheth, that he may have the li-  
 berty of a Subject, and that he  
 may not be concluded, and a Decree  
 submitted unto be overthrown, and  
 the small remainder of his ancient  
 Inheritance taken away from him  
 by Order of this Honourable House,  
 only upon a Petition.*

And he most humbly sub-  
 mits himself therein to  
 your Lordships, and  
 will ever pray for your  
 Honourable Preservati-  
 on.

This Petition being read and  
 considered of, these Lords, (*viz.*)  
 the Earl of Montgomery, the Earl  
 of Bridgewater, the Lord Bishop  
 E of

of Durham, the Lord Say and Seal, and the Lord Denny, were appointed by the House to set down an Order in this Cause between William and George Matthews; and the next day the Lords reported the Order they had made *in hac verba*, (viz.)

**T**He Lords of Parliament do order, That the Cause depending between William and Geo. Matthews, shall be reviewed in Chancery by the Lord Keeper, assisted by such of the Lords of Parliament as shall be nominated

minated by the House, and by any two of the Judges whom the Lord Keeper shall name; for which end, the Lord Keeper is to be an humble Suitor to the King from the House for a Commission unto Himself, and the Lords that shall be named by the House for the said Review, and final determination of the Cause, as to them shall be just and equal.

This Order being read, the House approved thereof, and these Lords were named by the House to be joyned in the said Commission with the Lord Keeper, (*viz.*) the Lord Chamberlain, the Earl of *Montgomery*, the Earl of *Bridgewater*, the Lord Bishop of *Durham*, the Lord Bishop of *Rochester*, the Lord *Russel*, the Lord *Denny*, and the Lord *Houghton*; and pursuant to this direction, supplication was made to the King for a Commission, and the Cause was reviewed by these Commissioners, and the former Decree in *Chancery* was reversed and a Decree made by them pursuant to the said Decree made by the Lords in Parliament, as appeared

the peers by the Orders made by  
 and these Commissioners in the Cause,  
 the which are to be seen entred in  
 the Registers Office in *Chancery*,  
 amongst the Orders of *Michaelmas*  
*and Hillary Term, 22 Jac.*

This being a great Authority,  
 it is fit to take notice what may  
 be collected from it; and the con-  
 sequences which will naturally  
 arise from hence, are these :

First, *That the King had a law-  
 ful Power to grant a Commission to  
 review Chancery-Decrees, else the  
 House of Lords (whose Judgments  
 are the most authentick, had never  
 directed supplication to be made to  
 the King for that purpose.*

Secondly, That the Judgment of a Lord Keeper is examinable by the Judgment of a greater number of persons fit for that purpose.

Thirdly, That it was more convenient the party grieved should be relieved by Commissioners, than that he should be delay'd of Relief until the Parliament were re-assembled. But, to proceed with our Precedents.

- By an Order of the 24th. of November, 3 Car. 1. entred in the Registers Office in Chancery, between Sir John Barker Bar<sup>r</sup>. and others, Plaintiffs, and William Minnyn and others, Defendants; it appears, that there had been a hearing in the Cause the 27th. of Janu-

January then past, and a Decree then made against the Defendants; and that the Defendant *Unwyn* refusing to yield obedience to that Decree, did exhibit a Petition to the King's most Excellent Majesty, who thereupon, the 2d. of the said month of November, was graciously pleased to signify his pleasure, that the Right Honorable the Lord Keeper, taking to his assistance Mr. Justice *Dodridge* and Mr. Justice *Hutton*, (as was pray'd by that Petition) should call before them the said parties whom the said Cause concerned, and after full hearing thereof on both sides, to make such final Order therein as they should find agreeable to

Justice and Equity; and if it should appear to them that the said Defendant *Unwyn* had unjustly complain'd of the former Decree made in this Cause, then to take order that the said Defendant might be severely punished for such unjust complaint: And that upon hearing the said Cause by the Lord Keeper and the said Judges, the first Decree was confirmed, and *Unwyn* committed to the Fleet till he had paid 30*l* Costs which was awarded against him.

By an Order of the 12*th*. of November, 7 Car. 1. between *Sherburn* and *Townley*, (which Order is enrolled in the Registers Office in Chancery) it appears, that upon *Townley's* Petition to  
 that



the King, the Decree made in the said Cause was to be reviewed by the Lord Keeper, Mr. Justice *Hutton*, Mr. Justice *Jones*, Mr. Justice *Whitlock*, Mr. Justice *Harvey*, by reference from the King; and in order thereunto, a Bill of Review was brought before them, and upon the 6<sup>th</sup>. of *July*, in the 7<sup>th</sup>. year of that King, the Cause was heard upon the said Bill of Review, and the first Decree reversed, as by the said Order of Reversal now entered in the Registers Office in *Chancery*, appears.

By an Order of the 1<sup>st</sup>. of *June*, 12 *Car. 1.* between *Penington* and *Holms*, (which Order is also entered in the Registers Office

fice in *Chancery*) it appears, that  
 upon a Petition exhibited to the  
 King's most Excellent Majesty  
 by *Holms*, supposing some Inju-  
 stice and wrong done him by a  
 Decree made in that Court be-  
 tween the said parties; His Ma-  
 jesty was pleased to refer the  
 matter to the Master of the *Rolls*  
 to call to his assistance one of the  
 Judges of the Bench, and to hear  
 what could be alledged against  
 that Decree, why the same should  
 not be put in execution? And in  
 pursuance of that Reference, the  
 Master of the *Rolls* and Mr. Ju-  
 stice *Grooke* re-heard the Cause;  
 but finding no reason to alter or  
 recede from the former Decree,  
 they confirmed the same, and  
 ordered

ordered it should be put in execution.

In the *Rolls Chappel*, amongst the Enrollments of the 15<sup>th</sup>. year of King Charles I. part 23. num. 5. indorſ. I find an Enrollment of a Commission, dated Sept. 12. 15 Car. 1: to review and rectifie a Decree made by the Lord Keeper Coventry; which Enrollment, because it may ſerve for inſtructions in many particulars, I ſhall recite *verbatim*; and is as followeth, (*viz.*)

R E X, &c.

**R** Everendiſſimo in Chriſto Patri  
ac pradilecto & per quam  
fideli Conſiliario noſtro, Willielmo  
Pro-

*Providentiâ Divinâ Archiepisc'*  
*Cantuar' totius Angliæ Primat'*  
*& Metropolit', ac charissimis &*  
*perquam fidelibus Consanguineis &*  
*Consiliariis nostris Henrico Comi-*  
*ti Manchester, Domino custod'*  
*Privati Sigilli nostri, & Eduardo*  
*Comiti Dorset, Domino Camerar'*  
*Hospitii Præcharissima, Consort'*  
*nostræ Henrietæ Mariæ Regina,*  
*necnon prædilecto & fideli Consilia-*  
*rio nostro Francisco Windebank,*  
*Mil' un' principal' Secretar' nostr'*  
*salutem cum quidam ordo ad men-*  
*sam Consilii privati nostri, undecimo*  
*die Februarii, ulto præterito ante*  
*dat' præsentium coram Regia Maje-*  
*state nostra ac vobis & aliis de pri-*  
*vato Consilio nostro, inter Danielelem*  
*Harvey, Executorem Test' & ul-*  
*timæ*

*timæ Voluntatis Roberti Chandler  
Mercatoris defuncti, & Johannem  
Langham, Executorem Test' &  
ultimæ Voluntatis Eduardi Vue-  
dal, Mercatoris etiam defuncti, con-  
fect' sunt in his Anglicanis verbis  
sequentibus, (viz.)*

*At White-Hall, Feb. 11. 1638.*

PRESENT,

*The King's most Excell.<sup>a</sup> Majesty,*

Lord Archbishop Earl of Dorset,  
of Canterbury. Earl of Holland,

Lord Keeper, Mr. Secretary

Lord Privy-Seal, Windebank,

Lord Marquess

Hamilton,

**T**He matter heretofore de-  
pending in Chancery be-  
tween Daniel Harvey, Executor  
of

of Robert Chandler Merchant,  
 Plaintiff, and John Langham, Ex-  
 ecutor of Edward Vuedal, Mer-  
 chant, Defendant, concerning  
 eight Bails of Silk, decreed in the  
 said Court of Chancery, the said  
*Harvey* was this day heard by his  
 Majesty, assisted with the Lords  
 of his Privy-Council above-men-  
 tioned, the parties on both sides  
 with their Council being present,  
 and it was then agreed on all  
 parts, that the only question in  
 the case, and whereupon the De-  
 cree was grounded, was, *Whether*  
*the said Vuedal was Debtor to the*  
*said Chandler for the said Silk?*  
 And it was agreed on all parts,  
 that if the Chandler's Book, which  
 hereto-

heretofore seemed to the Lord Keeper to be suspicious, were authenticke in that behalf, then the said Goods, or the proceeds thereof, ought not to have been taken from the said *Harvey*, or decreed against him without payment for the same. Now, for that fourteen able Merchants, upon a Reference from His Majesty, and perusal of the said Book, Bills of Lading, and all other Instruments requisite for their satisfaction therein, had certified His Majesty, as they would justifie upon their Oaths, that the said Book was authentick, and that the said *Vnedal* became Debtor to the said *Chandler* for the said Silk, as by the said Certificate

ficate then read (divers of the  
 said Merchants being also pre-  
 sent) did evidently appear; His  
 Majesty and their Lordships  
 were fully satisfied therein. Ne-  
 vertheless, His Majesty deman-  
 ded of the said *Langham*, whe-  
 ther he could except against the  
 said Merchants Certificate; who  
 answering thereunto, that he had  
 not been heard, it was made ap-  
 pear by the said Merchants, that  
 they had proceeded with the like  
 equality to both, they having  
 considered of the validity of the  
 said Book and Papers by them-  
 selves, without calling either of  
 the parties. His Majesty norwith-  
 standing was pleased to propound  
 to him, that either he should no-  
 minate



minate as many Merchants to be  
 joyned with them, or that other  
 Merchants should be named by  
 both parties, to whom His Ma-  
 jesty would also joyn some, and  
 by them would be again certified  
 before any further course should  
 be taken therein: But the said  
*Langham* refused to consent to  
 have it referred to any Merchants  
 at all. His Majesty therefore,  
 and their Lordships, for so much  
 as did then appear, and in respect  
 of *Langham's* averfeness to have  
 the business referr'd to Merchants,  
 who best understood the proof,  
 are of opinion, that the said Book  
 is authentique; and do therefore  
 order, That for the righting of  
 the said *Harvey*, a Commission  
 F of

of Review under the Great Seal  
 shall be awarded to the Lord  
 Archbishop of Canterbury, the  
 Lord Priny-Seab, the Earl of  
 Dorset, and Mr. Secretary Winde-  
 bank, or any Three of them, to  
 hear and determine the Cause;  
 prout per ordinem predictam plenius  
 liquet. Et apparet, scintia igitur  
 quod nos de fidelitatibus et providis  
 circumspiciendis vestris plurimum  
 confidentes assignavimus nos acito-  
 nos praesentium. Demus vobis, vel  
 tribus vestris plenam potestatem  
 et auctoritatem Decretis predictis  
 omni celeritate qua poteritis et o-  
 mni diligentia et sollicitudine  
 illis et capitulis  
 suis et ad eadem audiendi, examinandi,  
 considerandi et finaliter et abso-  
 luto determinandi, juxta tenorem  
 intentionem

intentionem propositum & effec-  
 ejusdem ordinis ac custag & Dam-  
 na (prout vobis videbitur expedire)  
 part' gravat' adjudicandi & affe-  
 dendi: processusq; quoscunq; in ea  
 parte necessar' concedendi & fieri  
 faciend' contemptus etiam quoscunq;  
 præmissa concernend' committend'  
 sive perpetrand' debite castigand'  
 ceteraq; omnia & singula quæ circa  
 permissa necessar' fuerint seu quovis  
 modo opportune peragendi & ex-  
 quendi adeo plene & in tam amplis  
 & consimil' modo & forma prout  
 Dominus custos magni Sigilli nostri  
 Angliæ facere potest sive p̄mit.  
 Mandamus etiam tenore præsentium  
 omnibus & singulis Officiariis &  
 Ministris nostris Car' Cancellari'  
 nostre prædict' & aliis Officiariis

Et Ministris nostris ad quos in ea  
 parte pertinebit quod ipsi et eorum  
 quilibet vobis et tribus vestrum  
 in executione premissorum diligenter  
 intendant prout decet ac quod pro-  
 cessus ordinis Judicis sive Decretis et  
 ceteris premissis per vos sive tres  
 vestrum virtute presentium redend-  
 fore faciend- et mandis vestris sive  
 trium vestrum subscribantur et  
 assignentur et super inde in Cur-  
 Cancellar' nostris irrotentur et  
 per confirmationem annuunt Augusti-  
 norum ordinis Judicis sive iudicis De-  
 cretis sive decretis et Processis  
 quosque per vos sive tres vestros  
 mittet circa premissa redend- sive  
 faciend- in processibus pro executione  
 inde et ad processibus in eis circa  
 executionem in huius Commissionis  
 nostra

nostræ volumus ac per præsentem  
 firmiter precipimus & mandamus Do-  
 mino custodæ magni Sigilli nostræ  
 Angliæ; pro tempore existens quod  
 prædicti processus ordinis iudicis De-  
 creti & cetera præmissa manibus  
 vestris vel aliquorum trium vestrorum  
 subscripti & signati de tempore in  
 tempus quoties & quando requisiti  
 foret cum magno Sigillo nostræ An-  
 gliæ Sigillari causabit: quæ omnia  
 & singula sint & erint tanti &  
 consimilis valoris effectus & efficacie  
 roboris & virtutis ac si per prædictum  
 Dominum custodæ magni Sigilli nostri  
 Angliæ redditæ factæ & Decretæ  
 fuissent; & hæc præsens Commissio  
 nostra tam vobis Commissionariis no-  
 stris vel aliquibus tribus vestrum  
 quam prædicti Domini custodæ magni

Sigilli nostri Angliæ, ac omnibus  
 Officiariis & Ministris nostris Cur'  
 Cancellar' prædict', & omnibus  
 aliis Officiariis & Ministris nostris  
 quibus pertinebit, sufficiens erit  
 Warran' & exoneratio faciend'  
 decernend', consignand', sigilland',  
 rotuland' & exequend' omnium &  
 singulor' præmissorum prædict' secun-  
 dam veram intentionem nostram &  
 tenorem præsentium Deniq; volumus  
 quod hæc Literæ nostræ Patentes  
 durabunt & permanebunt in pleno  
 robore & effectu donec Judic' sive  
 final' Decret' ordines & cætera  
 præmissa prædict' faciend' plenar'  
 fuerint in omnibus Execut'. In cu-  
 jus rei, &c. Teste Rege apud  
 Westm' xii. die Sept', anno Regni  
 Regis Caroli xv.

The

The substance of this Commission is, that the Commissioners should hear and finally determine the Cause, and that the Lord Keeper, and all other the Officers of the *Chancery*, should diligently observe and put in execution what Order soever those Commissioners did make in the Cause.

Pursuant to which Commission, the Commissioners met at *White-hall*, and the Registers of the *Chancery* attended them, as appears by the first Order the Commissioners made by virtue of that Commission, which is entred in the Registers Office in *Chancery* in *hac verba* :

*White-Hall.*

Lord Archbishop    Earl of Dorset,  
 of Canterbury,    Mr. Secretary  
 Lord Privy-Seal,    Windebank.

*Sabati, decimo quarto die  
 Decembris, anno Regni Ca-  
 roli Regis decimo quinto,  
 Int' Daniel Harvey, Execut'  
 Roberti Chandler, Quer., &  
 Johani Langham, Execut'  
 Eduardi Kuedal, Defend'.*

**W** Hereas, the 12th day of  
 September, last past, a  
 Commission under the Great Seal of  
 England was awarded unto the  
 Lord Archbishop of Canterbury his  
 Grace, the Lord Privy-Seal, the  
 Earl of Dorset, and Mr. Secretary  
 Windebank,



Windebank, or any three of them,  
 to review a Decree made in the  
 Honourable Court of Chancery the  
 28th day of January, duodecimo  
 Caroli Regis, in a matter then de-  
 pending in the said Court between  
 the said Mr. Harvey and Mr. Lang-  
 ham, concerning eight Bales of Silk,  
 and for the hearing, examining, and  
 final and absolute determining of  
 the said matter of variance and  
 controversy, according to the intent,  
 purport and effect of an Order made  
 at the Council board, mentioned in  
 the said Commission: Their Lord-  
 ships, in pursuance of the said Com-  
 mission, did appoint this day for the  
 hearing of the said Cause: Accord-  
 ingly the said Council learned  
 not both sides attending, and the  
 said

said Commission being read, the Council of the Defendant desired they might be heard as to the point of form and proceedings, before their Lordships entered into the hearing of the merits of the Cause; which being granted, it was alledged by Mr. Recorder of London, That a Decree made in the High Court of Chancery, and signed by the Lord Keeper, and an enrollment made thereof in the said Court, the Lord Chancellor or Lord Keeper could not by the constant and positive Rules of the said Court, review or reverse the said Decree so signed and enrolled, without a Bill of Review first exhibited in the said Court of Chancery for that purpose, and security

rity first given by the party exhibiting such Bill of Review by Recognizance in the same Court, with Sureties, to pay unto the party for whom such Decree was made, costs and damages, in case the party exhibiting such Bill of Review should not upon his Bill of Review be relieved.

*And the Council for the Defendant also further affirmed, That their Lordships being by the express words of the said Commission now read, to proceed in the hearing of this Cause in as ample, and in the like manner and form, as the Lord Keeper is and ought to do: So as no Bill of Review being yet exhibited by the said Harvey, the Council of*  
the

the <sup>x</sup> said Defendants conceived the matter no way ripe for their Lordships hearing. Whereunto it was answered, That there was no need of a Bill of Review, or Security in this Cause; for that it appeareth by the Order of the Council Board, mentioned in the said Commission, That it was at the making of the said Order agreed on all parts, that the only question in the Case, and whereupon the Decree was grounded, was, Whether the said Vuedal was indebted to the said Chandler for the said Silks? And it was then also agreed on all parts, that if the said Chandler's Book, which before seemed to the Lord Keeper to be suspicious, were authentic in that behalf, then the  
said

said Goods, or the procede thereof,  
 ought not to have, been taken from  
 the said Harvey, or decreed against  
 him, without payment for the same.  
 And further shewed, that it appear-  
 eth by the said Order, that divers  
 able Merchants, upon perusal of the  
 said Book, and other Papers requi-  
 site for their satisfaction therein,  
 had certified His Majesty, (as they  
 would justifie upon their Oaths) that  
 Vuedal was indebted to Chandler  
 for the said Silks, and the Book  
 authentique in that behalf; and that  
 His Majesty and the Lords (whereof  
 the Lord Keeper is One) were satis-  
 fied therein, and ordered, That a  
 Commission should be awarded for  
 arresting of the said Harvey, and  
 that the Commission is not that  
 their

their Lordships should proceed in the hearing of the Cause as the Lord Keeper is, and ought to do, *as Mr. Recorder hath alledged: but to hear and determine according to the tenor and purport of the said Order, as the Lord Keeper might or could do. And further offered to their Lordships consideration, Whether in a case of this nature, the Lord Keeper (not satisfied in the course and custom amongst Merchants, in their way of Debitor and Creditor, and there by making a Decree) might not upon such hearing and proceedings before His Majesty and Lords, and an Order thereupon made, reverse the same without such formality, if he pleases?*

*Besides,*

Besides, their Lordships are directed by their Commission with all celerity to review the said Decree, and to hear, examine, consider, and finally determine the matter of controversy, according to the effect and true meaning of the said Order, upon the sole point therein mentioned. Which several Allegations being considered of, their Lordships do order, That the Plaintiff shall prefer a short Bill of Review upon the points in the said Order, being the material parts whereunto the Case was thereby reduced, and shall file the same in Chancery, giving security to pay costs and damages, in case upon a bearing (according to the tenor and effect of the said Order and Commission) it be adjudged against him; which Bill being

being so preferred, and the Defendant duly served with Process or Warrant under the Lords Commissioners hands, the said Defendants shall forthwith make a direct and summary Answer, that so their Lordships may speedily proceed to hearing, according to the tenor of the said Commission.

W. Cant.

H. Manchester,  
Dorset,

F. Windebank.

After this Order, I can find no proceedings in this Cause: therefore having found out Sir James and Sir Stephen Langham, Sons of



of the *Langham* in the said Commission mentioned, one of them, I think it was Sir *James*, to the best of my remembrance ) told me, That he remembered his Father did pay a great deal of money upon the account of that Suit; which is a very great argument the first Decree (which was in favour of *Langham*) was reversed, or else that he compounded the matter, finding it would go against him.

I cannot find one tittle in any Book of Law against Commissions of Review of this nature. Indeed there are Opinions, That Commissions to hear and deter-

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mine

mine Civil Causes originally, according to discretion, are against Law, for that is an erecting of a new Court of Equity; for therein must not only be new Judges, but new Officers of all sorts: but in a Commission to review a Lord Chancellors Decrees, it is otherwise; and the Commissioners sitting in any other place than in the place of the Lord Chancellor in *Westminster-hall*, makes it no more a new Court, than if a Lord Chancellor should change his House, and hear Causes there, for the Chancery is *ambulatory* and *multitudinary*; in Term-time the Chancellor in the mornings hears Causes in *Westminster*

*ster-hall*, and often in the after-  
noons at his House ; and so doth  
the Master of the *Rolls*, in the  
*Rolls-Chappel*, or at his House,  
which he pleases ; and these  
several sittings in several places  
make not several *Chanceries*.

More precedents in all pro-  
bability might be found, than  
are before mentioned, though  
the search be very difficult : But  
from these, and from what is  
said before, it is evident, that  
judging according to Equity is a  
Prerogative of the King's, to  
mitigate the severity, and supply  
the defects of the Common-Law,  
according to good conscience,  
and natural Justice ; and that

former ly it was exercised by the King in person, but with the assistance of such wise men as he pleased to call thereto ; as, his Chancellor, Councel and Judges ; but afterwards, those sort of Suits growing more common, they were for the Kings ease left to the determination of the Chancellor of course ; yet so, as if he erred ( as King Rich. 2. promis'd in full Parliament ) Right should be forthwith done : And I am sure there is nothing appears to the contrary in any Book of Law, but that ever since that promise was made, upon Petition to the King, His Majesty, when he was not pleased to do

do it himself, referred the examination and rectifying of such mistakes to such a convenient number of fit persons, as were of discretion and knowledge in the Law, sufficient to weigh, and rightly to determine the matter. And it appears to this day (as is before-shewn) that in the Reign of Qu. *Eliz.* K. *James*, and K. *Charles I.* it was practised by the general consent both of Lords, Judges and Lawyers. All which put together, may very well make it out, that in those days it was look'd upon as a matter of Right, and an essential part of the Proceedings in *Chancery*,

After

After this time, (*viz.* 15 Car. 1. wherein our last precedent was) we cannot well expect any precedents of this nature; for within two years after, the King was opposed in his Government, and the Kingdom became involved in a most inhumane, unchristian, barbarous, and causeless Rebellion, against the best of Kings, and he most villainously murdered by his own too much indulged Subjects; and since His now Majesties happy Restauration, there was no occasion to revive this course of Proceeding, in respect there were almost annual Parliaments, (until of late) whereunto men did appeal; and since it is so, that there is no  
Parlia-

Parliament in being, nor hath been some years past, and perhaps it may not be convenient to have any yet a while, therefore I see no good cause to the contrary, but a great deal for it, that upon failure of one remedy, the other should be made use of; and that in the Intervals of Parliament there should be Commissioners to rectifie a Lord Chancellors Decrees.

It's true, there are some *Objections* made against it, (as there may be against any thing, be it ever so just or lawful; ) but I shall answer such as I have heard, and I hope effectually,

1: It is said, That the Statute 17 Car. 1. cap. 10. for regulating the Privy Council, and taking away the Star-Chamber-Court, hath deprived the King of this power of referring the examining and rectifying of the Decrees of a Lord Chancellor to such as His Majesty thinks fit.

As to which I have spoken more largely in the first Part; however, in regard what is said there hath not satisfied all, I shall here again (more briefly, and, if I can, more plainly) explain that Statute as to that particular; for which purpose it will be convenient to consider the Kings Royal Person seperate and abstracted from the Privy Council, and



and to distinguish between the Privy Council, as they *are*, the *Kings Advisers* only, and as they *were*, a *Court of Judicature*, before this Statute, which now they are not, as to the determining of *English* Property; yet they are the Kings Councillors, as they were before they were a Court of Judicature; and (with submission be it spoken) are to counsel the King what is proper for him to do, in order to the settling of other Judicatures, and keeping them within their bounds. Next, we are to single out what words, clauses and sentences in the Statute do concern this matter, from other concerns therein mentioned, the Statute being

being long, and comprehending many particulars.

The Prohibition in that Statute which concerneth this matter is in these words, (*viz.*) Be it likewise declared and enacted by the Authority of this present Parliament, That neither His Majesty nor Privy Councel have or ought to have any Jurisdiction, Power and Authority, by English Bill, Petition, Article, Libel, or any other Arbitrary way whatsoever, to examine or draw into question, determine, or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any of the Subjects of this Realm; but that the same ought to be tried and determined in the ordinary Courts of Justice, and by the ordinary Course of Law.

This is a full and absolute prohibition, that the King nor the

the Privy Council shall not have any Jurisdiction over the Estates of the Subjects of this Realm, upon any pretence or colour whatsoever. But Statutes are not to be taken by piece-meals ; the Law that is to be introduced by any Statute, springs from a construction of the whole body thereof ; Therefore , to understand the meaning of this Statute, we must cast our eyes forwards until we come to the end ; and before we come thither, we shall find a Provifoe which qualifies and expounds the whole Statute, as if the Parliament upon second thoughts had apprehended they had been too large in the premisses ; and it is in these words ;

120.

Provided always, and it is enacted,  
 That this Act, and the several Clau-  
 ses therein contained, shall be taken  
 and expounded to extend only to the  
 Court of Star-Chamber, and to the  
 Courts held before the President  
 and Council in the Marches of  
 Wales, and before the President in the  
 Northern-part, and also to the Court  
 commonly called the Court of the  
 Duchy of Lancaster, holden before  
 the Chancellor and Council of that  
 Court, and also in the Exchequer of  
 the County-Palatine of Chester, be-  
 fore the Chamberlain and Council of  
 that Court, and to all Courts of like  
 Jurisdiction to be hereafter erected,  
 ordained, constituted, or appointed  
 as aforesaid, and to Warrants and  
 Directions of the Council-Board,  
 and to Commitments, Restraints,  
 and Imprisonments of any person or  
 persons made, commanded, or awar-  
 ded by the King's Majesty, his Heirs  
 and Successors, in their own persons,

or by the Lords and others of the Privy-Council, and every one of them.

This Proviso is a Declaration to what particulars only this Statute shall extend : So that if the King's giving authority to Commissioners to rectifie and review a Lord Chancellors Decrees are not within the letter, nor cannot be construed to come within the meaning of some of those particulars mentioned in the Proviso, then it is not prohibited by this Act.

It is obvious, that it is not within the letter of any of those particulars ; but it may be said, that it may be comprized within the meaning of this clause, *viz.*  
*And*

*And to all Courts of like Jurisdictions to be hereafter erected, ordained, constituted, or appointed.*

As to this, if the King's appointing Commissioners to review and rectifie a Lord Chancellor or Lord Keepers Decrees, be an ancient part or branch of the proceedings in *Chancery*, then the putting of that in practice is not an erecting of a new Court of like Jurisdiction with the Courts taken away by the Statute; for the *Chancery* is not mentioned to be taken away, nor any part of its proceedings mentioned to be altered. And that this was a part of the proceeding in *Chancery*, and a distinct thing from the *Council-board* and *Star-Chamber*,

*Chamber*, and the proceedings thereof, the former precedents fully demonstrate; and it doth not appear the Privy-Council were concerned in any of them, save in the Cause of *Harvey* and *Langham*, and then only as Advisers, and the King's Council, and Assistants, not as Judges; and therefore the taking away of the *Star-Chamber*, and a prohibiting the Council-board to hear and determine Causes as Judges, may as well be construed to take away the proceedings before the Master of the *Rolls*, as to take away the appointing of such Commissioners: For, as the hearing and determining of Causes before the Master of the *Rolls*, is

a branch of the Court of *Chancery* below and inferiour to the *Chancellor*; so the other is a branch of the *Chancery*, superiour to the *Chancellor*. And further, to shew it is a Proceeding in *Chancery*, and not erecting a new Court, the same six Clerks, the same Registers, and the same Officers of all sorts, are under those Referrees and Commissioners as are under the Lord Chancellor; and as the Lord Chancellor is to examine and rectifie the Decrees of the Master of the *Rolls*, so such Commissioners are to examine and rectifie the Decrees of the Chancellor, and the Parliament may rectifie Their Decrees, and the subsequent Parliament may rectifie



rectifie the proceedings of the precedent Parliament; and this is the true constitution of the *Chancery* as to Equity, and the due course of proceeding therein.

The next thing objected, is, *That though this course might be lawful, yet it will be inconvenient for these reasons. 1. It will draw a great deal of trouble upon the King; And 2dly. It will be a means to prolong Suits, and consequently will give opportunity to men to be the more vexatious.*

As to the trouble supposed it will draw upon the King, there is not a necessity for His Majesty to hear the Cause in person, it is sufficient if he refers it to others; And whether that be more trouble

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ble than His Majesty will please to undergo, we must submit it to His pleasure, having shewed how necessary and Legal it is.

As to the second Objection, if that course be no erecting of a new Court, or course of proceedings, nor prolonging of those Suits longer than what was usual and approved in all past Ages, (as appears by what is aforesaid it is not) then it ought not to be taken off; the Common-Law of the Land, and the common course of Justice, being the Peoples Right, and not in reason to be altered but by common consent. And the Law is, *That ancient Courts are to be exercised according*  
to

to ancient and just institutions, as it is held by 6 *H.* 7. fo. 45. and *Cooke* 4 *Inst.* fo. 125. And it may with as much or better reason be said, that there shall be no Writ of Error at all from the Judgments of *Kings-Bench*, *Common-Pleas*, and *Exchequer*, but to Parliament, than to say there ought to be no Appeal from a Lord Chancellor or Lord Keepers Decrees, but to Parliament. For I must stand to it, that the Judgments of these Courts where there are many Judges, are more likely to be right, according to the nature of their Jurisdiction, than the Judgment of any single man; and consequently there is less need of Appeal from their Judgments, if

so much may be said without reflection. And this I learnt in part from old *Bracton*, who fo 1. b. speaks somewhat (I confess) irreverently of such as depend too much upon their own Judgments: *Licet sint nonnulli qui de propria Sententia præsumentes quasi nil juris ignorent, nolunt alicujus consilium habere; in quo casu honestius, & consultius eis foret, consilium habere, quam aliquid temere, definire.* That is, There be some, who being over-confident of their own knowledge, as if ignorant of nothing, will not ask advice of others, though it were more honesty and more wisdom for them to take advice, than to determine any thing rashly; ne modo furientis gladio feriat innocentem,

tem, & liberat nocentem ; *lest like a mad-man he smite the innocent, and free the guilty.*

Every Judge ought to do as it is in the 19<sup>th</sup>. of Judges, ver. 30. *Consider, and consult, and then give Sentence* ; which implies , that without consultation there can be no good resolution, and without assistants there can be no consultation. And further, all Judges ought to regard the former Judgments of their Predecessors; for when any thing is become *rem judicatam*, it is become a rule for men to dispose of their Properties by, and therefore ought not to be slightly changed, lest the settled Rule become a Snare ; and therefore it is said, *The eye*

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*that*

that mocketh his Father, and despiseth the counsel of his Mother, (viz. regards not the resolution of his Predecessors) let the Ravens of the valley pick it out, and the young Eagles eat it, Prov. 30. 17. Again, Where there is no Council, the people fall, Prov. 11. 14. Whence it is apparent, we are abundantly safer in the resolutions of Many, than of One single Judge, that will consult with nobody but the Clients Council, whose business it is to perswade the Court to what is best for their Client, rather than what is most just. And this is an approved Maxim amongst us, That we ought to do all we can for our Client: But because I have known  
some

some ruin'd by the false suggestions of Councel, I will recommend to their consideration the Statute 3 Ed. 1. cap. 9. whereby it is provided,

That if any Serjeant, Pleader, or other, do any manner of deceit or collusion in the King's Court, or consent unto it, in deceit of the Court, or to beguile the Court and the Party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that Court for any man. And if the Trespass require greater punishment, it shall be at the King's pleasure.

*Humanum est errare ; sed in errore perseverare, belluinum est : It is incident to mankind to mistake ; but to persist in an error, is brutish. It is no shame to a man that it is*

(Fro4)

discovered that he hath erred in Judgment ; but it is very unreasonable that a Judge should oppose the legal means of examining whether he hath erred in his Judgment, or no ; or that he should hinder the rectifying of such error, if by the proper Touch stone it appear to be so. The late Lord Chancellor Nottingham (to ~~his~~ eternal praise be it remembered) in his Argument in the Case of *Howard* against the Duke of *Norfolk*, publickly acknowledged in Court, That he was as other men were, and had his partialities as other men had ; and that he had made many Decrees since he sat in that place, which had been reversed in another ; yet he was

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not ashamed he had made those Decrees, nor sorry when they were reversed. Which plainly shews, single men are more subject to mistake than many; and that if there had not been frequent Parliaments, or some other remedy, those men against whom he had made such Decrees must have injuriously suffered longer than they did. And I must needs say again, It is not a parent in those Decrees of the Lord Nottingham that the now Lord Keeper reversed, which of them is in the right, until determined by a convenient number of Judicious and Learned men

As to what is said, That there is no body but will appeal, be the Decree ever so just, if they had opportunity,

portunity, and by that means Suits will be prolonged to an unnecessary length ; Experience shews us the contrary of that ; for though every body that will, may appeal from the Decrees of the Master of the Rolls to the Chancellor, yet there is not one in a hundred that doth ; and though there may be Writs of Error had from most of the Judgments of the Courts of Kings-Bench, Common-Pleas, and Exchequer, by any that will, yet there is not a Writ of Error brought upon one Judgment in a thousand ; and where such Writ of Error is brought without cause, the delay is recompenced with full Costs. But though there might be

be some that might abuse this privilege, yet it is hard that those that have a real cause of appeal should be deprived of the benefit thereof, because the mischief of delaying a man a little, bears no comparison with the evil of depriving a man of his whole subsistence by a mistaken Judgment or Decree before Appeal; for in the latter case, it is like disarming a man, and then forcing him to maintain the fight, wherein 'tis a thousand to one if he overcome, let his Cause be ever so good; for Law can be no more wag'd without Money, than War without Weapons.

All people do admit, that there ought to be an Appeal from a  
 Lord

Lord Chancellors Decrees ; but they would have it only to the House of Lords assembled in Parliament. And I agree that if the House of Lords were always, or for the most part sitting, an Appeal could not be to better Judges : but an Appeal signifies but little, if it be not had before the mistaken Decree be performed ; And since Parliaments are not always sitting, what hinders a convenient number of those very Lords of Parliament to judge upon Appeals as well out of Parliament time, as in Parliament ? Have not those Noble Lords the same Understanding and the same Reason to guide their Judgments, and the same

natural parts and faculties, out of Parliament, as in Parliament? And is it not as convenient and necessary for the King at this day to authorise a convenient number of Lords for that purpose, as it was when the House of Lords directed that supplication should be to the King for such a Commission in the Case of *Matthews* against *Matthews*, in King *James's* time before-mentioned, rather than defer the injur'd from Justice until the House of Lords meet again, for there is little difference between the delay and denyal of Justice. So that if an Appeal may be before Parliament, why must we stay for Right until Parliament?

It

It is said, *That it tends to the taking away of the Jurisdiction of the House of Lords.* And it is but said so ; for there is not any thing like reason that I ever heard offer'd for it. Yet, to put the thing more out of doubt, I would but compare this with the Case of Writs of Error brought upon Judgments at Common-Law ; yet, notwithstanding such Writ of Error, there may be a Writ of Error to the House of Lords from the Judgment given upon the first Writ of Error, as well by force of the Common as Statute-Law ; and this I am sure is Law. And is not there the same reason that the House of Lords may examine the Decrees of the Referrers or  
Com-

Commissioners that examine a Lord Chancellors Decrees, as that they may examine the Judgment of the Judges upon a Writ of Error? Doubtless there is. All that is in the Case is, that men will have speedier Right against a mistaken Decree by such Referrees or Commissioners, than if they staid for the House of Lords to be assembled in a Parliamentary way. And moreover, the House of Lords will not be so much troubl'd as if they only examin'd all Decrees that should be complain'd against, for tho' a single mans Judgment may easily be over-sway'd from Right, yet the Judgment of the majority of a convenient number of men,  
being

being sifted and tried by Arguments *pro & con*, cannot so easily be so. And in all probability, the Opinion of the majority of the House of Lords will concur with theirs, as it doth in almost all Cases of Writs of Error upon Judgments in Writs of Error. And therefore, tho' Writs of Error upon all Judgments upon Writs of Error, may be brought in Parliament if men list, yet they are but very rarely brought, two or three perhaps in a Session; because it is very seldom that there is any variance in the Judgment of the House of Lords from the Judgment upon the first Writ of Error which is given by several. But this I speak *argumenti gratia*



*gratia* only; for I depend chiefly upon this, that the Kings promise in Parliament, in R. 2.'s time before-mentioned, and an ancient usage and custom pursuant thereto, without discontinuance or gainsaying, until the late Rebellion, is the Law of the Land, and not to be altered or laid aside but by common consent of the Kings Majesty and His Three States. And that this hath been the constant usage from Generation to Generation, without contradiction in the least, ever since the Chancellors of *England* had the power of determining Causes, until the Kingly Power it self was discontinued, sufficiently appears by what is aforesaid, Nay  
I further,

is so reasonable, that the late Usurping Powers could not but order, anno 1654. That if any found himself agrieved by a Decree in Chancery, made either by the Lord Chancellor, or Lord Keeper, or Lords Commissioners of the Great Seal for the time being, upon Petition preferred in open Court to such Lord Chancellor, or Lord Keeper, or Commissioners, and upon depositing the Money decreed into Court, and a convenient sum towards answering costs, such Lord Chancellor, Keeper, and Commissioners for the time being, were to allow of the bringing of an Appeal, and to signify such their allowance to the Courts of Kings-Bench, Common-Pleas, and Exchequer, and those Courts were thereupon

thereupon to send two Judges out of each Court to meet such Lord Chancellor, Lord Keeper, or Commissioners, in the Exchequer-Chamber at a certain day, and the Cause was to be heard upon the former proofs, and they were to alter, annul, or confirm the Decree, according to the Opinion of the majority of them. And since his Majesties happy Restauration there hath been almost annual Parliaments, until these few years last past, whereunto men did appeal.

These passages I mention only to shew that there was no time in England until now, wherein it was not thought reasonable that there should be a place for present Appeal from the Decrees of a L.

Chancellor, and such as exercise  
his place; and I cannot but grieve  
at it, for the Honour of the Go-  
vernment, and for my own sake  
and for the sake of those that do  
or shall stand in need of Appeals,  
that there is any colour for men  
to think that Justice was at any  
time better or more indifferently  
administred than now.

*Lambert in his Archeion, f. 118.*  
says, That it is inseparably incident  
to the Office of a King to be Judge  
of his people: And that how many  
Courts soever of ordinary resort shall  
be established by him, yet if they  
have not authority to apply remedies  
for all wrongs and diseases; or if  
that power and authority they have  
may not enjoy her free course and  
passage

passage, (which is, if they mistake  
 in their Judgment, or will delay  
 giving Judgment) then must the  
 King exercise his own Pre-eminent  
 and Royal Jurisdiction, or else the  
 injur'd must be depriv'd of that help  
 and remedy which both the Ordinance  
 of God, and Duty of a Kingly Judge,  
 and the common Law of Nature and  
 Reason, do afford unto him. And  
 again, the same Author, f. 274.  
 declaring, That he had run through  
 our Courts of all kinds, deriving  
 them from the Crown, their Original,  
 and drawing them one by one,  
 as it were so many Roses from the  
 Garland of the Prince, leaving nevertheless  
 the Garland undespoiled of  
 that her sovereign vertue in the administration  
 of Justice; and therefore,

fore, whatsoever power is by him committed over unto other men, the same nevertheless remains in himself, insomuch as he may take knowledge of all Causes unless it be Felony, Treason, or such-like, wherein (because he is a party) he cannot personally sit in Judgment, but must perform it by his Delegates ; It being a Law as annient as the Kingdom, that there might be appellation to the King's Person whensoever cause should enforce it : That is, as I take it, when the next and immediate Judge under him commits an error, then His Majesty is either to correct it in his own person, or by special Commissioners for that purpose, or in Parliament, as the time and nature

ture of the Cause requires. And when men have run through that course which the Law hath provided, they ought to submit to their condemnation: But on the other hand, it is hard that they should be concluded before they have the full benefit of the whole course of Justice, and of such means of relief as reason and the Constitution of the Government do afford them.

Since all the world over that only can be said to be Justice and Right which is so declar'd by the Political Order & Institution of the Countrey where the matter is in debate; if a man be concluded before he run through all that course, if he desire it, he

is concluded too soon. And the course and method of proceeding in the administration of Justice in *England* is not now to be invented, nor indeed ought it to be alter'd or abridg'd but by Act of Parliament; and what that course is, as to proceedings in Equity in *Chancery*, is before sufficiently demonstrated, unless you'll admit that a discontinuance first occasion'd by *Rebellion* shall destroy the King's promise in full Parliament; and a long practice pursuant thereunto, with the consent and approbation of all the Lords, Judges and Lawyers of the Kingdom.

Those Judgments or Decrees can scarce be thought just, how  
just



just soever they be, that dare not stand the trial which the Law admits; and as there's none but would think it hard, if a Judgment were had against him in the *Common-Pleas*, and if he desired a Writ of Error, that it should be deny'd him, or that he should be forc'd to satisfy the Judgment before he hath his Writ of Error: So for my part I think it much harder that a man must perform the Decrees of a Lord Chancellor or Lord Keeper before he can have an Appeal, if he apprehend cause for it; for it is not much unlike compelling a Gamester to part with his Money upon loss of the first Game, before the Set is up.

*The*

We are taught by the Learned, and one of the most Reverend Fathers in God, the late Lord Archbishop *Usher*, in the 118th. page of his most incomparable Treatise, *Of the Power of Princes, and Obedience of Subjects*, That if any man thinks that he hath received hard measure from the inferiour Magistrate, he may without breach of Obedience appeal unto the superiour; and if the Superiour doth not do him right, he may seek relief from the Supreme; but if our humble supplications to him cannot prevail, there is nothing left, but that we commit our selves and our Causes to God, who judgeth righteously.

The late Lord Chief-Justice Vaughan, in his Reports, f. 139: affirms, That if any man thinks that a person concern'd in Interest, by the Judgment, Action, or Authority exercised upon his Person or Fortune by a Judge, must submit, in all or any of these, to the imply'd discretion and unerringness of his Judge, without seeking such redress as the Law allows him: it is a persuasion against common Reason, the received Law and Usage both of this Kingdom and almost all others. And he says further, That if a Court, Inferiour or Superiour, hath given a false or erroneous Judgment, there's nothing more frequent than to reverse such Judgments by Writs of false Judgments, Writs of Error,

or

or Appeals, according to the course of the Kingdom; and that when Judges have given corrupt and dishonest Judgments, they have been complain'd of in all Ages, either to the King or Parliament. And he there instances several Records of Convictions for corrupt Judgments.

In the *Whole Duty of Man*, Part 1. fo. 223. (which I think is no Libel) I find this passage: By Oppression, I mean that open and bare-fac'd Robbery of seizing the Possessions of others, and owning the so doing; for which there are several Instruments: First, that of Power, &c. Sometimes again Law is made the Instrument of it. He that covets his Neighbours Lands or Goods,

*Goods, pretends a Claim to them, and then by CORRUPTING OF JUSTICE, by Bribes and Gifts, or else by Over-ruling it by Greatness and Authority, gets Judgment on his side. This is a high Oppression and of the worst sort, thus to make the Law, which was intended for the Protection and Defence of mens Rights, to be the means of Overthrowing them; and it is a heavy guilt on Him that pronounces such a Sentence; yea, and on the Lawyer too that pleads such a Cause: for by so doing he assists in the Oppression. And I beseech every one to consider it, if they that can procure a Redress against such Actions, and do not, are not in some sort partakers of the Guilt;*

Guilt ; for *Error quod not repellitur, approbatur* ; the Error that is not withstood, is approved of. But as to those that industriously oppose the Remedy, I must put them in mind of *Deut. 27. 19.* *Cursed is he that hindreth the Right of the Stranger, the Fatherless, and the Widow: And all the People shall say, Amen.*

When Samuel was become old, and not able to determine Causes himself, he made his Sons Judges : but they walked not in his ways, and turned aside after lucre, took Rewards, and perverted Judgment. Wherefore all the Elders of Israel gathered them together, and came to Samuel, and said, Behold, thou art old, and thy Sons walk not  
in

in thy ways, make us now a King  
[to Judge us] like other Nations,  
1 Sam. 8. 1, &c.

If in a Countrey thou seest the oppression of the Poor, and the defrauding (or perverting) of Judgment and Justice, be not astonish'd at the matter; for He that is higher than the Highest regardeth it, and there be higher than they, Ecl. 5. 7.

Rob not the poor, because he is poor, neither oppress the afflicted in Judgment; for the Lord will plead their Cause, and spoil the soul of those that spoiled them, Prov. 22. 22.

Surely all this stir against Injustice, in so many Authorities, Divine and Legal, Ancient and Modern, is not for nothing, And besides,

besides, how many examples are there of failings even in the best of men! *Noah*, that was one of the Eight that were sav'd from the Universal Deluge, was afterwards guilty of Drunkenness. *Lot*, who was the only man that escap'd the Destruction of *Sodom*, was guilty of Drunkenness and Incest both together. *David*, a man after God's own heart, yet was he once guilty of Murder and Adultery. Did not *Peter* deny his Master? And did not *Nero*, from the best of Emperours, become the worst of Tyrants? Are we not taught by our Saviour to pray against temptation? And doth not Holy Writ admonish him that standeth, that he take heed lest he fall?



*fall*? And must it now be a crime to suppose a possibility that any man now living, or that shall come hereafter, may commit the like offences as their Predecessors have done, when done only in order to procure a revivor of an old remedy, lest it should so happen again?

I must needs stand to it, tho' it cost me ever so great a fall, that *what hath been may be again*; and it is but common prudence to provide in Summer against Winter; and so in the time of a good Lord Chancellor, or Lord Keeper, to provide against a bad one comes. *Felix quem faciunt, aliena pericula cautum.* Men will be men still, and Judges are no

K

more

more infallible in these days, than in former times : They do and will carry about them the like Passions and Infirmities as their Fore-fathers did, tho' they break not forth at all times alike ; and therefore it is expedient that the good old means of relief, found out and practiced by the Wisdom of many Generations past, be not laid aside, but continued, not only because of Errors already committed, but for fear of such as may hereafter happen ; for not only the people are protected, but (saith the wisest of men )

*The Throne is establish'd by Justice,*

*Prov. 16, 12.*

*F I N I S.*

☞ Pag. 32. l. 12. after *give them*, r. *Power.*

### Errata]

**I**N the Epistle Dedicatory. fo: 3. l. 6. read *Costs*.  
p. 27. l. 11. read *Courts*. p. 32. l. 12. r. *give*  
*them Power*. p. 34. l. 17. dele (*which*.) p. 56. l. 18  
r. *Enter'd* pa. 60, l. 5. r. *Henrico*. p. 62. l. 6. read  
*Chancery against*, &c. p. 63. l. 16. r. *quorumcumq;*  
p. 106. l. 15. dele *of Err*. and read *Writ of Error*.

1. The first part of the document is a list of names and addresses, which are arranged in two columns. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list includes names such as "John A. Smith", "Mary A. Smith", "James A. Smith", and "Elizabeth A. Smith". The addresses are written in a similar cursive script, and include details such as "123 Main Street", "New York City", and "New York State".

